

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

| | | |
|--------------------------------------|---|-------------------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| Plaintiff, |) | Civil No. 3:09-cv-30201 |
| |) | |
| v. |) | Judge _____ |
| |) | |
| FREDERICK F. FILIOS, individually |) | |
| and as the Executor of the Estate of |) | |
| LOUIS A. FILIOS, |) | |
| |) | |
| Defendant. |) | |

COMPLAINT

The Plaintiff, the United States of America, by its undersigned counsel, at the request and with the authorization of a delegate of the Secretary of the Treasury and as directed by a delegate of the Attorney General, pursuant to 26 U.S.C. § 7401 and 31 U.S.C. § 3713(b), brings this Complaint to: (1) reduce to judgment certain unpaid federal tax assessments made against Louis A. Filios; and (2) obtain judgment against Frederick F. Filios for distributing property of the Estate of Louis A. Filios, of which he was the Executor, at a time when there was an unpaid obligation of the Estate due to the United States arising from certain unpaid federal income tax assessments against Louis A. Filios. For these purposes, the United States complains and alleges as follows:

Jurisdiction and Parties

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1340, and 1345 and 26 U.S.C. § 7402.
2. Defendant Frederick F. Filios resides within the jurisdiction of this Court.

3. Louis A. Filios died on June 12, 2001; his son, Frederick F. Filios is, or at all times relevant was, the Executor of the Estate of Louis A. Filios (the “Estate”).

**Count I - To Reduce Federal Income
Tax Assessments to Judgment**

4. The United States incorporates by reference the above allegations of paragraphs 1 through 3 as paragraph 4 of the Complaint.

5. On the following dates, a delegate of the Secretary of the Treasury of the United States made certain income tax assessments against Louis A. Filios for unpaid federal income taxes, penalties, and interest, for the following income tax years, in the following amounts, which have balances due as of November 24, 2009, as follows:

| Tax Period Ended | Assessment Date | Assessed Amount | Amount Owning as of November 24, 2009 |
|-------------------------|------------------------|----------------------------|--|
| 12/31/1992 | 11/24/1999 | \$167,484.00 ¹ | \$307,347.34 |
| | 11/24/1999 | \$142,090.522 ² | |
| | 11/24/1999 | \$194,121.00 ³ | |
| 12/31/1993 | 11/24/1999 | \$133,807.00 ¹ | \$442,818.51 |
| | 11/24/1999 | \$82,276.27 ² | |
| 12/31/1994 | 12/23/2002 | \$97,623.00 ¹ | \$297,152.03 |
| | 12/23/2002 | \$83,885.53 ² | |
| 12/31/1995 | 12/23/2002 | \$77,265.00 ¹ | \$701,572.88 |
| | 12/23/2002 | \$250,676.00 ³ | |
| | 12/23/2002 | \$174,504.91 ² | |
| 12/31/1996 | 12/23/2002 | \$707,710.00 ¹ | \$216,519.94 |
| | 12/23/2002 | \$83,772.00 ³ | |

¹ Income Tax ² Interest Assessed ³ Additional Income Tax Assessed

⁴ Failure to Pay Penalty ⁵ Estimated Tax Penalty ⁶ Late Filing Penalty

| | | | |
|------------|------------|-----------------------------|-----------------------|
| | 12/23/2002 | \$46,381.52 ² | |
| 12/31/1997 | 12/23/2002 | \$979,249.00 ¹ | \$63,255.05 |
| | 12/23/2002 | \$26,538.00 ³ | |
| | 12/23/2002 | \$11,131.97 ² | |
| | 12/23/2002 | \$2.17 ⁴ | |
| 12/31/1998 | 12/30/2002 | \$1,135,088.00 ¹ | \$55,928.45 |
| | 12/30/2002 | \$25,158.00 ³ | |
| | 12/30/2002 | \$7,914.02 ² | |
| 12/31/1999 | 12/30/2002 | \$1,210,617.00 ¹ | \$26,900.39 |
| | 12/30/2002 | \$12,993.00 ³ | |
| | 12/30/2002 | \$2,765.28 ² | |
| 12/31/2001 | 11/11/2002 | \$239,728.00 ¹ | \$538,536.19 |
| | 11/11/2002 | \$9,487.00 ⁵ | |
| | 11/11/2002 | \$53,938.80 ⁶ | |
| | 11/11/2002 | \$8,390.48 ⁴ | |
| | 11/11/2002 | \$10,313.68 ² | |
| | | | \$2,650,030.78 |

6. A delegate of the Secretary of Treasury of the United States properly issued notice of the assessments described in paragraph 5, and made demands for payment to Louis A. Filios, or subsequent to his death, to his personal representative.

7. Louis A. Filios, or a representative of the Estate, litigated Louis A. Filios' income tax liability for tax years 1992 – 1999 before the United States Tax Court and the United States Court of Appeals for the First Circuit.

8. The Courts issued decisions upholding the Commissioner's determinations of deficiencies (except for certain accuracy-related penalties for tax years 1992 and 1993), and the

assessments are based upon those final judicial decisions.

9. On or about September 27, 2004, the Internal Revenue Service filed with the Estate a proof of claim for payment of the assessments described in paragraph 5, plus interest and statutory additions through the date of the proof of claim, in the amount of \$2,524,735.21.

10. Despite the notices of the assessments and repeated demands for payment, Louis A. Filios and the Estate have failed, neglected, or refused to fully pay the federal income tax liabilities set forth above and, after the application of all abatement, payments, and credits, the Estate of Louis A. Filios remains liable to the United States for the unpaid balance of the 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, and 2001 federal income tax liabilities in the total amount of \$2,650,030.78, plus statutory additions and interest according to law, accruing from November 24, 2009.

Count II - Fiduciary Liability

11. The United States incorporates by reference the above allegations of paragraphs 1 through 10 as paragraph 11 of the Complaint.

12. On or about January 17, 2003, Frederick F. Filios, as Executor of the Estate, filed an inventory of the Estate with the Probate Court reflecting personal property in the amount of \$5,532,626.00 and real property in the amount of \$215,000.00.

13. On various dates following Louis A. Filios' death and before the date of this Complaint, Frederick F. Filios transferred personal property of the Estate and executed a deed or deeds conveying certain real property included in the Estate to beneficiaries of the Estate and/or creditors of the Estate other than the United States.

14. Frederick F. Filios made the transfers described in paragraph 13 with prior knowledge that the Estate's federal income tax obligations to the United States remained unpaid.

15. As Executor of the Estate, Frederick F. Filios had a duty to inquire into and investigate the liabilities of the Estate, including the federal tax liabilities at issue in this case. Accordingly, Frederick F. Filios reasonably should have known of the federal tax liabilities at issue in this case prior to the making the transfers described in paragraph 13.

16. The transfers of property of the Estate by Frederick F. Filios, without first satisfying the Estate's obligations to the United States for the unpaid income tax liabilities of the decedent, Louis A. Filios, renders him personally liable to the United States for the unpaid federal income tax liability of the decedent which was required to have been paid to the United States by the Estate.

WHEREFORE, the United States of America demands judgment:

(a) in favor of the United States of America and against the Estate of Louis A. Filios and Frederick F. Filios, as Executor of the Estate, in the amount of \$2,650,030.78, plus statutory additions and interest according to law, accruing from November 24, 2009, for unpaid federal income tax liabilities;

(b) in favor of the United States of America and against Frederick F. Filios, individually, in the total amount of the lessor of (1) in the amount of \$2,650,030.78, plus statutory additions and interest according to law, accruing from November 24, 2009, for unpaid federal income tax liabilities; or (2) the value of all distributed assets of the Estate as of the date(s) of distribution, plus interest and other statutory additions from the date of distribution; and

(c) for its costs and such further relief as the Court deems just and proper.

CARMEN M. ORTIZ
United States Attorney

/s/ Nathan L. Strup
NATHAN L. STRUP
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 514-6058
E-mail: Nathan.L.Strup@usdoj.gov